

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 93-0726 CS

Controlled Substance Excise Tax

For Tax Period: July 20, 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested on July 20, 1993, by the Indiana State Police, for possession of marijuana on previous dates. Taxpayer was also assessed the controlled substance excise tax on July 20, 1993. Taxpayer protested the tax assessment and requested an administrative hearing. Additional relevant facts will be presented below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

(1) delivered,

- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on a total of 741.30 grams of marijuana. The assessment reflects two separate occurrences of marijuana possession as reported by the Indiana State Police. The dates of possession were August 13, 1992, and August 18, 1992. The Department did not weigh the marijuana independently. The Department's assessments were based on the weights recorded by the Indiana State Police lab. The assessments were made almost a year after the charged possessions.

Taxpayer protests the assessments and claims he was not in possession of the controlled substances during either of the occurrences. Taxpayer points to the Indiana State Police reports and affidavits used to establish probable cause for arrest (hereinafter "affidavits") to support his protest. Separate affidavits were filed for the two separate occurrences. The affidavit related to the August 13, 1992, incident relays an account of a controlled drug buy through a police informant. The affidavit indicates the transaction occurred in a private residence and the marijuana was purchased from someone other than the taxpayer. Taxpayer was present in the home at the time of the transaction. However, there is no evidence of taxpayer's possession, delivery or manufacture of the controlled substances. As such, the assessment based on the weight of the marijuana from the first transaction should be cancelled.

A second affidavit relayed the events which occurred on August 18, 1992. On that date, there was another controlled drug buy. Taxpayer and another defendant drove taxpayer's vehicle to the arranged meeting spot and sold marijuana to a police informant. The marijuana was transported in taxpayer's vehicle to the transaction location. The Department finds the taxpayer was in possession of the marijuana involved in this transaction for purposes of the controlled substance excise tax.

FINDING

Taxpayer's protest is sustained in part and denied in part. The assessment will be adjusted to remove the weight of the marijuana involved in the August 13, 1992, incident (185.39 grams). The assessment based on the marijuana possessed on August 18, 1992, remains as initially assessed.

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